Equality and Human Rights Commission Response to the Social Security Committee’s Inquiry into Social Security and In-work Poverty

Creating a fairer Britain
Equality and Human Rights Commission
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The Equality and Human Rights Commission is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

The Social Security Committee’s inquiry into social security and in-work poverty

The Commission welcomes this inquiry and the opportunity to provide written evidence to the Social Security Committee. The inquiry has asked respondents to focus on the following four questions:

1. What impact will Universal Credit have on in-work poverty in Scotland?
2. What is the experience so far in full-service areas in Scotland for those who are in work and who are moving or have moved on to Universal Credit?
3. What is known about those experiencing in-work poverty in Scotland who do not claim or are not eligible for Universal Credit?
4. What can or should the Scottish Government do to mitigate any detrimental impact?

The Commission's written evidence will focus on the first, third and fourth questions.

1. What impact will Universal Credit have on in-work poverty in Scotland?

In-work poverty and social security

Numerous studies show an increase in the use of foodbanks across Scotland. Moreover, Scottish Government statistics show that, between 2014 and 2017, an average of 540,000 people annually, including 150,000 children, lived in in-work poverty, which is defined as individuals living in households with a household income below the poverty threshold despite the household containing at least one adult in employment. During the same time period, an average of 59 per cent of working-age adults living in relative poverty in Scotland lived in in-work poverty. All figures are on an after housing costs basis. Employment does not guarantee a route out of poverty for many of these individuals and households.

There are several factors influencing in-work poverty: from the rate of pay and the number of working hours to the income lost or gained through the social security and tax system. A

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1 The Trussell Trust, for example, reported a 17 per cent increase in Scotland in the number of emergency food packages in 2017/18 compared to 2016/17. Scotland saw a faster rate of increase than the United Kingdom as a whole, where emergency food packages issued by Trussell Trust foodbanks increased by 13 per cent in 2017/18. The Trussell (2018), End of Year Stats. Available at: [https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/](https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/).
3 Ibid.
social security system therefore can play a vital role in addressing in-work poverty. Yet, it is clear from the evidence included in this submission and various reports that many of the reforms to the current social security system since 2010 have contributed to this rise in in-work poverty.

A progressive social security system would, for example, aid disabled peoples’ autonomy and their right to independent living, which is a human right enshrined in the Convention on the Rights of Persons with Disabilities.

It is important to note that, as the Social Security (Scotland) Act 2018 states, social security itself is a human right. In international law, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) affirm the right to social security. The Committee on Economic, Social and Cultural Rights’ General Comment No. 19 focuses specifically on the right to social security and states that it is “of central importance in guaranteeing human dignity for all persons”. The General Comment further identifies key elements of the right to social security, which are availability, affordability, adequacy and accessibility. This means that the social security entitlements, for instance, must be adequate in terms of the amount of financial support and duration of support that it provides, so that everyone may realise their right to an adequate standard of living. In this regard, the Commission would like to highlight the important work of the Scottish Human Rights Commission on the right to social security and on socio-economic rights in general.

The right to social security also entails a recognition of the disadvantages and discrimination faced by individuals and groups, including people with, or who share protected characteristics. Disabled people and people with caring responsibilities, for example, might not be able to work full-time or part-time and therefore wholly or partly rely on social security entitlements. Social security therefore plays an important role in addressing inequalities in Scotland.

The right to social security is also supported by the right to non-discrimination. The Scottish Government and public bodies linked to the social security system are bound by the Equality Act 2010 and public sector equality duty (PSED), as well as some further specific duties. This means that the Scottish and UK Governments, social security agencies as well as other public bodies such as local authorities, have a duty to have due regard to the advancement of equality of people with, or who share protected characteristics by, for example, removing or minimising disadvantages, taking steps to meet the needs of people from protected groups, and encouraging and enabling people with, or who share protected characteristics to participate in public life.

The Fairer Scotland Duty, which came into force in April 2018, further requires the Scottish Government and public bodies across Scotland to actively consider how they can diminish inequalities of outcome caused by socio-economic disadvantage when making key strategic decisions.

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decisions. Given the importance of social security in addressing socio-economic disadvantage, the Fairer Scotland Duty requires that the Scottish Government needs to consider how its social security policies can help to reduce socio-economic disadvantages.

**Universal credit**

Universal Credit (UC) was introduced by the UK Government in October 2013, with the stated aim of simplifying the social security system through consolidating the payment of a number of social security entitlements into a single payment.\(^7\) While this can be seen as a potential positive step towards addressing the complexity of the social security system, the cuts associated with UC and the problems linked to its roll-out have meant that UC has had a largely negative impact on the right to social security.

The 5- or 6-week wait, which is associated with the move to Universal Credit and sometimes lasts even longer, means that many claimants will struggle to pay their rent and provide for their families and/or themselves. This and other issues linked to the roll-out, such as IT problems and accessibility issues for claimants who have no access to a computer or skills to use computers, have led key stakeholders\(^8\), and the Scottish Government and COSLA\(^9\) to call for the halt to the roll-out of UC.

Research has shown that two years into the four-year freeze on entitlements, which has been in place since April 2016 and impacts on entitlements such as the support for children under UC, has had a significant impact on children.\(^10\) The further reduction in November 2016 of the upper limit of social security entitlements (the so-called ‘benefit cap’) for most people aged 16 to 64 applies to all households whose entitlement to prescribed social security exceeds the amounts specified, regardless of their needs.\(^11\) Additionally, the cuts in the work allowances in UC have seen the amount, which UC claimants can earn before UC starts to be tapered away at 63 per cent for every £1 increase in gross earnings, reduce.

**Its impact on in-work poverty in Scotland**

The Commission’s response to the Committee’s question on the impact of UC on in-work poverty will focus on our Britain-wide research into the cumulative impact assessment of social security and tax reforms between 2010 and January 2018, as well as our legal work.

The EHRC’s cumulative impact assessment research report, which was published in March 2018, examines the impact of these reforms on the household and individual incomes in the year 2021/22 of people with, or who share protected characteristics and by household deciles.

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\(^{11}\) Section 96 of the Welfare Reform Act 2012, as amended by Section 8 of the Welfare Reform and Work Act 2016. In Greater London to £23,000 and for those outside Greater London to £20,000. UK Government (2018), Benefit cap. Available at: [https://www.gov.uk/benefit-cap](https://www.gov.uk/benefit-cap).
Overall, the research demonstrates that the social security and tax reforms, including the move to UC, will have a significant negative and disproportionate impact on the average annual household income of the poorest households in Scotland and of people with, or who share protected characteristics.\textsuperscript{12}

The research found that the work allowance cuts will have a significant impact on the annual income of the poorest households in Scotland by 2021/22, with the second income decile losing an average of over £200 annually from this reform alone.

It also illustrates that lone parents in work, as well as couples with children where both adults are in employment, will see a significant reduction in their average annual income due to UC. Lone parents are set to lose an average of £600 annually due to the UC work allowance cuts alone and, combined with the other tax and social security reforms, they will lose just under 10 per cent of their income by 2021/22. The move to UC will therefore particularly affect children and women, who are the majority of lone parents, in Scotland. This reflects the overall disproportionate negative impact of the social security and tax reforms since 2010 on women and households with children.

Using its legal powers the Commission intervened in the case \textit{DA and Others v SSWP}, which examined the application of the ‘benefit cap’ to lone parents with children under the age of two. The ‘benefit cap’ requires a parent to work a minimum of 16 hours a week to avoid the cap and, from April 2017, child tax credit and UC have been restricted to the first two children in a family. The claimants in this case are single mothers with children under the age of two years, who have separated from violent partners. While the Department for Work and Pensions (DWP) argued that the women could avoid the cap by finding part-time work, free nursery care is not available for children under two and, due to the high childcare costs, it was impossible for the claimants to work. However, the Commission’s argument that the ‘benefit cap’ discriminates against lone parents with children under the age of two years was unsuccessful, as the Court of Appeals upheld the Government’s appeal against the High Court decision. The High Court had ruled in favour of the claimants. In March 2018, permission to appeal to the Supreme Court was given.

The cumulative impact assessment research also found that households with at least one disabled person are negatively impacted by the move to UC, with households with a higher disability ‘score’ in Scotland seeing a greater negative impact on their average annual income by 2021/22.

In relation to the impact on disabled people, the Commission intervened in a case, \textit{TP and AR v SSWP}, challenging the removal of Severe Disability Premium (SDP) and Enhanced Disability Premium (EDP) following the introduction of UC. SDP and EDP were aimed at covering the additional care needs of severely disabled people, who live on their own without a carer. In June 2018, the High Court found that the regulations to remove EDP and SDP did not involve discrimination in so far as they do not include any element which corresponds to the additional disability premiums payable under the previous social security regime. However, the removal gave rise to unlawful discrimination in so far as there was differential treatment between the group of persons, who are in receipt of additional disability premiums (the SDP and EDP) and who transferred to universal credit on moving to a different local housing authority area and so receive less money than they previously received, and the group of persons in receipt of SDP and EDP, who move house within the

same local housing authority area but are not required to transfer to universal credit and continue to receive the basic allowance and SDP and EDP.

The Commission also intervened in the case *Hurley, Jarrett and Palmer v SSWP*, which looked at the impact of the ‘benefit cap’ on carers, who do not live in the same household as the person they are caring for. In 2015, the court held that the Secretary of State for Work and Pensions indirectly discriminated against carers for disabled family members by failing to exempt them from the benefits cap irrespective of their living arrangements.

The move to UC also has a specifically negative impact on some ethnic minority households, with black and ‘differing’ households in Scotland seeing a change in their annual net income of several hundred pounds by 2021/22. Our Britain-wide research also demonstrates that the uprating freeze, two-child limit and cuts to UC work allowances will have an especially significant impact on Pakistani and Bangladeshi households, while research indicates that the two-child limit will have disproportionate effects on children from Black African, Pakistani and Bangladeshi backgrounds.

Overall, our cumulative impact assessment of the social security and tax reforms demonstrates that the move to UC has a disproportionately negative impact on and further exacerbates the inequalities faced by people with, or who share protected characteristics. The Commission is particularly concerned that these cuts to annual household incomes will mean that the level of social security entitlements cannot secure an adequate standard of living for households and individuals who partially or wholly rely on social security entitlements.

The Annex attached to this submission provides a more detailed look at this research. The EHRC has offered to facilitate a separate session on this cumulative impact assessment research for the Committee.

### 3. What is known about those experiencing in-work poverty in Scotland who do not claim or are not eligible for Universal Credit?

It is estimated that there were over 500,000 cases of families or individuals not claiming their entitlements in 2014/15. However, there is very limited data available in relation to the uptake of entitlements by people with, or who share protected characteristics. The DWP has published some restricted data in relation to the uptake of income-related entitlements by age, sex and household type, including information on households containing children.

It illustrates that, for example, the take-up rate for families entitled to Housing Benefit is higher in the social rented sector than in the private rented sector. This has important equality implications, as disproportionately high number of ethnic minority adults tend to live in the private rented sector in Scotland.

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Migrants are also likely to face difficulties when accessing the social security system. Some may not be eligible for social security, including UC. Others who are eligible to receive social security entitlements, might either not be aware of their entitlement or the public authorities, which are in charge of processing their entitlements or providing relevant support services, might be unaware of their entitlement and therefore refuse them access to the social security system. Shelter Scotland has examined the evidence of the use of gatekeeping in Glasgow City Council.\(^\text{18}\) This evidence illustrates the problems people can face when trying to access support from public bodies. This is exemplified by the case of a male EEA National, who presented as homeless to the Council but was refused accommodation due to the Council misunderstanding his immigration status and homelessness assistance rights. The EEA national ended up sleeping rough and, not long after, died due to a drug overdose.\(^\text{19}\)

The Social Security (Scotland) Act 2018 creates a duty on Scottish Ministers to promote take-up and for the Ministers to lay a promotional strategy before Parliament. While the Scottish Government's recent campaign to increase the uptake of social security entitlements in Scotland is a positive step towards increasing uptake,\(^\text{20}\) much of the work so far seems to have focused particularly on young carers and people who are above the age of 64.\(^\text{21}\) This campaign could have gone further to address equality-related issues and the need of other people with, or who share protected characteristics, such as disability, race or sex. Some disabled people and people facing communication barriers, for example, will be likely to face increased barriers in relation to accessing the social security system and the uptake of entitlements unless their communication needs are specifically addressed by reasonable adjustments in the strategy.

4. **What can or should the Scottish Government do to mitigate any detrimental impact?**

It is important to recognise that in-work poverty is a complex issue that requires the Scottish and UK Governments to address, among others, key social security, equalities, human rights, childcare, health and social care and employment policies. The high cost and reduced availability of childcare, prevalence of zero-hours contracts, the rate of the National Living Wage and unfair employment policies, for example, have a significant impact on the rate of in-work poverty experienced by people in Scotland.\(^\text{22}\) It is important to recognise that the Scottish Government only has powers in some of these policy areas and that its powers are restricted when it comes to social security, particularly in regard to Universal Credit.

The Commission is particularly concerned about the regressive nature of the UK social security reforms, including the move to UC, and the impact of the reforms on the right of


\(^{19}\) Ibid.


people with, or who share protected characteristics to an adequate standard of living. We therefore recommend that the Scottish Government should take the following actions:

- examine the uptake of entitlements from an equalities perspective and guarantee that the uptake promotion strategy adequately reflects these perspectives to ensure that people with, or who share protected characteristics are encouraged and enabled to access the social security entitlements that they are entitled to;
- fulfil its requirements under the Fairer Scotland Duty and ensure that the Scottish Government’s social security policies advance equalities of outcomes and adequately consider socio-economic disadvantages;
- review and ensure that the level of social security entitlements that they have responsibility for secure an adequate standard of living for households and individuals who rely on partially or wholly transfer payments;
- look at the possibility of uprating entitlements they have responsibility for;
- ensure that the actions taken by the Scottish Government do not have unintended consequences, for example by ensuring that uplifting entitlements under their control are not, if possible, offset or made worse by knock-on changes to other social security entitlements under the control of the UK Government;
- collect data on and monitor the impact of UC and other social security policies on people with, or who share protected characteristics;
- ensure that equalities and human rights matters play a central role in and underpin the social security system in Scotland:
- carry out and publish Equality Impact Assessments of key individual tax and social security measures that it plans to introduce: and
- conduct cumulative impact assessments of its social security, tax and public spending policies and take actions accordingly.
ANNEX: The EHRC’s cumulative impact assessment of social security and tax reforms

In March 2018, the Equality and Human Rights Commission published a cumulative impact assessment of social security and tax reforms between 2010 and January 2018. It examines the impact of these reforms on the household and individual incomes in the year 2021/22 of people with, or who share protected characteristics and by household deciles. It demonstrates that Universal Credit (UC) will have on the disproportionately negative impact on the annual income of people with, or who share protected characteristics, and of households that already have some of the lowest incomes in Scotland.

The report looks at the UC and some individual policy decisions, such as the UC work allowance cuts. It is important to note that the research assumed that the roll-out of UC would lead to a higher uptake of entitlements, as it presumed that claimants will find it easier to access the social security entitlements that they are entitled to. However, this might not be the case and, thus, the impact of the move to UC might have an even greater negative impact, especially on households with the lowest annual income which were expected to benefit the most from a potential increase in uptake.

Figure 1: Cash impact of specific policy reforms by household income decile, 2021-22 tax year in Scotland

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As can be seen in Figure 1, the report shows that the work allowance cuts will have a significant impact by 2021/22 on the annual income of the poorest households in Scotland, with the second income decile losing an average of over £200 annually. The same applies to the two-child limit, which entails that the second deciles loses a further £200 annually.

Figure 2: Average annual percentage impact of reforms to direct taxes, transfer payments and National Living Wage by employment status of working-age households, 2021/22 tax year in Scotland:

The research also found that, as shown in Figure 2, lone parents in work, as well as couples with children where both adults are in employment, will see a reduction in their income due to UC. Together with the other tax and social security reforms, lone parents in work, for example, are set to lose just under 10 per cent of their annual income by 2021/22.

Figure 3 below further demonstrates the impact on households with children and shows that lone parents are set to lose an average of £600 annually due to the UC work allowance cuts alone. Across Great Britain, lone parents are set to lose over £500 per year due to the cuts to UC work allowances, meaning that the monthly work allowance for lone parents will be worth only £397 compared with £769 if it had been uprated in line with the Consumer Price Index inflation since 2013.\(^{25}\)

This reflects the wider overall negative impact of the social security and tax reforms since 2010 on women and households with children. The research, for instance, estimates that Scotland will see a rise in child poverty of around 8 per cent as a result of these reforms.\textsuperscript{26}

Moreover, it further exaggerates inequalities that women already face in employment and wider society. The vertical and occupational segregation of the labour market sees women over-represented in lower level roles and in sectors and occupations that are less well paid.\textsuperscript{27} Women are also more likely to work part-time, for example, due to caring responsibilities and most workers on zero-hours contracts are women.\textsuperscript{28} The disproportionate impact of these reforms on women therefore further increases the inequalities faced by women in Scotland.

**Figure 3: Cash impact of specific policy reforms by household demographic status, 2021/22 tax year, in Scotland:**

![Cash impact of specific policy reforms by household demographic status, 2021/22 tax year, in Scotland](image)

The cumulative impact assessment also illustrates that households with at least one disabled person are negatively impacted by the social security and tax reforms, including the move to UC, with households with a higher disability ‘score’ seeing a greater negative


\textsuperscript{28} Ibid.
impact on their average annual income by 2021/22. Figure 4 below shows the impact of particular social security and tax reforms on the household income by household disability ‘score’. It demonstrates that reforms such as the UC work allowance cuts disproportionally affect households with at least one disabled household member.

Figure 4: Cash impact of specific policy reforms by household disability ‘score’, 2021/22 tax year, in Scotland:

Unfortunately, the research was unable to include analysis on all protected characteristics due to a lack of reliable data. In relation to household ethnicity in Scotland, the research did not include an analysis of specific policy reforms, as above in relation to household disability ‘score’ in Figure 4, or of the employment status, as above in Figure 2 in regard to household type. However, the researchers were able to assess the impact of UC by household ethnicity irrespective of employment status, as shown in Figure 5 below. As this clearly shows, households of black or ‘differing’ ethnicity will face a particularly high loss in their annual income by 2021/22.

Our Britain-wide assessment also found that the uprating freeze, two-child limit and cuts to UC work allowances will have an especially significant impact on Pakistani and Bangladeshi households, with Bangladeshi households losing an average of almost £2,150 and Pakistani households losing an average of almost £1,900 annually by 2021/22.\textsuperscript{30} Research also indicates that the two-child limit will have disproportionate effects on children from Black African, Pakistani and Bangladeshi backgrounds, as these children are more likely to live in large families.\textsuperscript{31}

Overall, our cumulative impact assessment of the social security and tax reforms demonstrates that the move to UC has a disproportionately negative impact on people with, or who share protected characteristics and further exaggerates wider inequalities in, for instance, employment and education faced by people with, or who share protected characteristics.

\textsuperscript{30} Equality and Human Rights Commission (2018), \textit{The cumulative impact of tax and welfare reform}.

\textsuperscript{31} Women’s Budget Group and the Runnymede Trust (2017), \textit{Intersecting inequalities: The impact of austerity on Black and Minority Ethnic women in the UK}. Available at: \url{https://www.intersecting-inequalities.com/}. 